

APPEAL NO. 030591
FILED APRIL 28, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 27, 2003. With respect to the issues before him, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____; that she had disability from September 3 to September 5, 2002, and from September 7, 2002, through the date of the hearing; and that the claimant timely reported her injury to her employer. In its appeal, the appellant (carrier) argues that each of those determinations is against the great weight of the evidence. In her response to the carrier's appeal, the claimant urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant sustained a compensable injury; that she had disability from September 3 to September 5, 2002, and from September 7, 2002, through the date of the hearing; and that the claimant timely reported her injury to her employer. Those issues presented questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was persuaded that the claimant sustained her burden of proof on each of the issues. The factors emphasized by the carrier in challenging the hearing officer's injury, notice, and disability determinations on appeal are the same factors it emphasized at the hearing. The significance, if any, of those factors was a matter for the hearing officer. Nothing in our review of the record reveals that the challenged determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse those determinations on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

In her response to the carrier's appeal, the claimant asserts error in the hearing officer's exclusion of Claimant's Exhibit No. 5, a copy of the claimant's pay stub for the period including the date of injury, because it was not timely exchanged. Initially, we note that the claimant prevailed on each of the issues before the hearing officer and is, thus, not aggrieved by the decision. However, we further note that although the hearing officer did not admit the exhibit in evidence, he permitted the claimant to use the document to refresh her recollection and, as such, the substance of the document was in evidence through the claimant's testimony. Finally, the claimant argues that the document should have been admitted to rebut Carrier's Exhibit No. 5, a time clock archive report. We have previously determined that impeachment and rebuttal

evidence is not exempted from the exchange requirements of the 1989 Act. Texas Workers' Compensation Commission Appeal No. 92204, decided July 6, 1992. As a result, we cannot agree that the hearing officer erred in excluding this exhibit. However, it is important to note that the hearing officer specifically stated that Carrier's Exhibit No. 5 was "implausible on its face and not credible." Thus, even if error could have been shown in the exclusion of an exhibit to rebut Carrier's Exhibit No. 5, it would not rise to the level of reversible error.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Michael B. McShane
Appeals Panel
Manger/Judge